much as the minority member of the Committee who had dissented on that particular recommendation, was unable to be present at the meeting.

Among the recommendations thus adopted, attention is called to the following:

That a candidate for admission to the Bar should have an education equivalent at least to that required for graduation from a high school within the state in which the application is made; that the Association is not to be understood as holding the opinion that a high school education is fully adequate to the needs of those who are to practice law, but on the contrary, entertains the opinion that the interests of the profession and of the state will be promoted if all candidates for admission are required to have an education equivalent at least to two years of a college course; that the Association approves a rule requiring candidates for admission to the Bar to study law for three years if graduates of law schools, and for four years if not; that the Association approves a four years' course in case of night law schools; that the Association disproves conferring a law degree by correspondence schools.

DEVELOPMENT OF THE DOCTRINE OF UNFAIR COMPETITION.

Growth is the test of vitality in every living organism and that there should be a gradual development of the principles of law and the powers of the courts is undeniable, but in the case of *Samuel W. Rushmore v. Manhattan Screw and Stamping Works,* decided by the United States Circuit Court of Appeals, July 27, 1908, where the decision was rendered on the authority of previous rulings, we have what seems to be a rather wide extension of the law of development and even a misinterpretation of the cases cited to substantiate the decision.

The complainant, S. W. Rushmore, secured an injunction against the Manhattan Screw and Stamping Works on the grounds of unfair competition in the production and sale of an automobile lamp. He had widely advertised a lamp "Flare Front," insisting particularly upon the advantages of its peculiar shell-shaped construction. The defendant's lamp "Phoebus" having practically the same design, it was the complainant's charge that the defendant was profiting by his advertising and pawning off on the public its lamp as the "Flare Front." The design of the "Flare Front" was not patented by the complainant; the word

"Phoebus," together with the name of its manufacturer, was legibly and clearly stamped upon the lamp of the defendant; and sufficient proof was not advanced to establish that the defendant had ever represented its lamp as that of the complainant. Nevertheless an injunction was granted against the manufacture or sale of defendant's lamp. The judge of the Circuit Court, whose opinion is sustained by the Circuit Court of Appeals, gives the following reason for issuing the injunction: "Assuming that at the present time the defendant is not using the word 'flare-front,' is not selling its product as Rushmore lamps, and is not using in any way either of these words or phrases, the question is whether plaintiff is entitled to be protected from unnecessary imitation of non-functional parts of his well-known lamp. It seems to me that under the cases of *Enterprise Manufacturing Co. v. Landers,* 131 Fed. 240, and *Marvel Co. v. Pearl,* 133 Fed. 160, he is so entitled." A close examination of the authorities cited discloses in the present case a very remarkable development of the doctrine of unfair trade. The following extract from the opinion of the court in *Enterprise Manufacturing Co. v. Landers, supra,* shows the wrong done complainant to be much more aggravated than in the present case. "Here on the contrary, they have not only conformed their goods to complainants' in size and general shape, which was to be expected, but also in all minor details of structure—every line and curve being reproduced, and superfluous metal put into the driving wheels to produce a strikingly characteristic effect, while the goods are so dressed with decorations reproduced or closely simulated, with style of lettering and details of ornamentation, that except for the fact that on the one mill is found the complainant's name and on the other the defendants', it would be very difficult to tell them apart. Defendants admitted using parts of mills sold by complainants as patterns wherever it was convenient or profitable to do so." Evidently there is in question here a far closer imitation than was found to exist in the case of the "Phoebus."

In the case of *Marvel Co. v. Pearl, supra,* the injunction asked for was denied, the court saying: "In the absence of protection by patent, no person can monopolize or appropriate to the exclusion of others elements of mechanical construction which are essential to the successful practical operation of a manufacture, or which primarily serve to promote its efficiency for the purpose to which it is devotel. Unfair competition is not established by proof of similarity in form, dimensions or general appearance

alone." It does not seem to be questioned that the flaring front design has, in an automobile lamp, decided utility and this is the feature of the "Phoebus" to which censure is primarily attached. Thus the cases cited apparently are not authority for the present ruling.

Independent of these two cases from which an argument in favor of an injunction can be drawn only with difficulty others may be cited which hold positively against the ruling; as for example in the case of *Brown v. Seidel,* 153 Pa. St. 60, the court said: "It is only where there is a manifest intent on the part of one manufacturer to sell his goods as and for the goods of another manufacturer that the aid of equity has been successfully invoked." No such intention was proven on the part of the Manhattan Screw and Stamping Works. While in order to prove fradulent intent it is not necessary to show that any purchaser was in fact misled, *Von Mumm v. Frash,* 56 Fed. 830, still the absence of evidence to show that any one has been deceived is a circumstance tending to show that no one is likely to be deceived, *Heinz v. Lutz,* 146 Pa. St. 592. This is especially true where the article is expensive.

Automobile lamps are as a rule sold among persons of more than ordinary intelligence and being an expensive article we might naturally expect that care would be used in their selection. The fact that these circumstances must be considered, is clearly demonstrated by the case of *Fischer v. Blank,* 138 N. Y. 244, in which the court said: "The true test, we think, is whether the resemblance is such that it is calculated to deceive, and does in fact, deceive the ordinary buyer making his purchases under the ordinary conditions which prevail in the conduct of the particular traffic to which the controversy relates."

THE EFFECT OF NONUSE ON A PATENTEE'S REMEDY AGAINST INFRINGEMENT.

Our liberal theory as to patent right is in harmonious accord with the broad spirit of our constitutions and our courts encouraging private enterprise in general. Commerce, manufacture and production have been left as free as possible from governmental surveillance. For in a new country, the chief ambition is growth and the strongest incentive to advance is private property. Not only should the volume of business be improved, but also the methods of operation should constantly be changed for the